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July 11, 2008

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Kim Collins, Esq.
Federal Election Commission
Office of the General Counsel
999 F. Street, N.W.
Washington, D.C 20463

RE: *MUR 5979*
Oberweis for Congress, Inc. and
Sharon Martin, as treasurer;
James Oberweis, individually
Motion to Dismiss

Dear Ms. Collins:

Enclosed please find Respondents' motion to dismiss the above reference matter based upon the recent ruling from the United States Supreme Court in the matter of Davis v Federal Election Commission.

Should you have questions regarding this motion, please contact me at your earliest opportunity.

Very truly yours,


Paul E. Sullivan

PES/ps

Encl.

cc: Mr. James Oberweis
Sharon Martin, Treasurer
Chairman Donald F McGahn II
Vice-Chairman Steven Walther
Commissioner Cynthia Bauerly
Commissioner Caroline Hunter
Commissioner Matthew Petersen
Commissioner Ellen Weintraub

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BEFORE THE FEDERAL ELECTION COMMISSION

Oberweis for Congress, Inc. and)
Sharon Martin, as treasurer;)
James Oberweis, individually)
)
)
_____)

MUR 5979
Motion To Dismiss Complaint

I. Introduction

This Motion To Dismiss is filed on behalf of Oberweis for Congress, Inc., and Sharon Martin, as its treasurer (Committee) and James Oberweis (Oberweis), in his individual capacity (Respondents). For the reasons stated below, Respondents move that based upon a recent ruling from the United States Supreme Court, the Commission make a finding of no reason to believe and close the file in the above referenced matter as it pertains to all of the Respondents.

II Factual Summary

Oberweis was a candidate for the Republican nomination and for the special general election in 2008 for the 14th Congressional District of Illinois. Between July 12, 2007 and March 3, 2008 Oberweis loaned the Committee a total of two million eight hundred thirty thousand dollars (\$2,830,000) which was designated among the primary and special primary election (both held February 5, 2008) the special general (held March 8, 2008) and the general election to be held November 4, 2008.

The Bipartisan Campaign Reform Act of 2002 (BCRA), which amended the Federal Election Campaign Act of 1971, as amended, (FECA) contained a provision generally referred to as the "Millionaires Amendment"; BCRA §319(a) and (b).

By a letter dated February 28, 2008, Brian Wolff, Executive Director of the Democratic Congressional Campaign Committee (DCCC) filed a complaint (Complaint) with the Federal Election Commission (FEC or Commission) alleging the Committee failed to timely file FEC Form 10's related to certain loans which Oberweis made from personal funds in violation of the Millionaire Amendment of the FECA, specifically 2 U.S.C. §441a-1(b)(1)(D). The Complaint also alleges that as a result of this aforementioned violation, Oberweis was individually in violation of the conciliation agreement in MUR 5410 which "enjoined him from future violations of campaign finance law".

Respondents filed an answer to the Complaint on April 1, 2008 which denied each of the alleged violations (Response).

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III Arguments

- A. The United States Supreme Court has issued an opinion in *Davis v FEC* which holds as unconstitutional those statutory provisions upon which the Complaint is based, and therefore the Complaint must be dismissed.

In *Davis v Federal Election Commission* (___ U.S. ___, No. 07-320 slip op.) the Court considered the matter in which Davis, like Oberweis, was a candidate for the U.S. House of Representatives and contributed in excess of \$350,000 of his personal funds to his campaign committee. Davis a candidate in 2004 and 2006 was informed by the FEC General Counsel's office that the Commission found reason to believe during the 2004 election cycle, Davis violated the disclosure provisions of the Millionaire Amendment, namely, §319 of BCRA (2 U.S.C. §441a-1).

Davis a candidate in 2006 filed a statement of candidacy, (FEC Form 2) and indicated he intended to contribute one million dollars (\$1,000,000) of personal funds to the 2006 campaign committee. In anticipation of the resulting disclosure obligations of the Davis committee and the enhancement of the contribution limits that would be available to his opponent as a result of the Millionaire Amendment, Davis filed a complaint with the U.S. District Court for the District of Columbia, alleging the Millionaire provisions were facially unconstitutional pursuant to the First Amendment.

The Court found that BCRA §319(a), which permitted the increased limits for the opponent of Davis to be an unconstitutional violation of the First Amendment.

"But the unprecedented step of imposing different contribution and coordinated party expenditure limits on candidates vying for the same seat is antithetical to the First Amendment." (Davis, slip op., page18).

Correspondingly, the Court found that the filing and disclosure requirements of BCRA §319(b), the statutory basis upon which the Complaint is based, was also unconstitutional.

"The §319(b) disclosure requirements were designed to implement the asymmetrical contribution limits provided for in §319(a), and as discussed above, §319(a) violates the First Amendment. In light of that holding, the burden imposed by the §319(b) requirements cannot be justified, and it follows that they too are unconstitutional." (Davis, slip op. at page 18, footnote omitted).

The Davis case is on all fours with the facts involved in the Complaint. Since the Court has held the applicable provisions of the Millionaire Amendment to be unconstitutional, there is no statutory basis upon which to allege Respondents violated the FECA. As

such, the FEC is obligated to make a finding of no reason to believe, dismiss the Complaint, and close the file.

- B. Since Oberweis did not violate the Millionaire Amendment provisions of the FECA as alleged in the Complaint, there is no basis upon which to allege Oberweis violated provisions of conciliation agreement in MUR 5410.

The Complaint alleges Oberweis personally violated provisions of the conciliation agreement in MUR 5410 which enjoin him from future violations of the FECA. With the FEC finding that Respondents did not violated the Millionaire Amendment provisions of the FECA, there is no basis upon which to support the Complaint's allegation that Oberweis violated the conciliation agreement of MUR 5410.

For that reason, the Commission must make a finding of no reason to believe related to the Complaints allegations against Oberweis individually, approve the motion to dismiss and close the file.

IV Conclusion

Based upon the arguments set out above, Respondents respectfully request the Commission make a finding of no reason to believe, find in favor of Respondents' motion to dismiss and close the file in this matter.

Respectfully submitted,



Paul E. Sullivan
Counsel for Respondents